

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 3:18-cv-01289

MATTHEW MALLORY,  
ALTERNATIVE MEDICINAL OPTIONS, LLC,  
GARY KALE, GRASSY RUN  
FARMS, LLC, their agents,  
servants, assigns, attorneys, and all  
others acting in concert with the  
named defendants,

Defendants.

**MOTION OF THE UNITED STATES OF AMERICA  
TO STAY ORDER ENTERED ON JANUARY 17, 2019, (ECF NO. 60)**

The United States of America requests that the Court stay its order entered on January 17, 2019 (ECF No. 60) on the following grounds:

1. The crop harvested by the Mallory defendants needs to be tested to determine if it is actually “hemp” as defined by 7 U.S.C. § 5940 and the 2018 Agriculture Improvement Act (“AIA”). If the THC level is above .3%, then the crop is not “hemp” but “marijuana” as defined by the Controlled Substances Act (“CSA”), and the crop is illegal under federal law. See 7 U.S.C. § 5940(b)(2); Agricultural Improvement Act of 2018, Public Law No: 115-334, § 10113 (Section 297A(1)). The Court’s ruling is predicated on the crop being actually “hemp” and not “marijuana.” In this case, the seed for the crop at issue came from an unsupervised source and did not come from an approved DEA registrant or through a DEA registrant. Thus, a dispute does exist as to whether the crop is actually “hemp” as defined by 7 U.S.C. § 5940 and the AIA. Therefore, the United States requests that it be allowed to take and test samples of the crop to

determine whether it is actually “hemp” as defined by 7 U.S.C. § 5940 and the AIA or “marijuana” as defined by the CSA, 21 U.S.C. § 802(16).

2. The United States has a right to appeal this Court’s decision to dissolve the preliminary injunction. This Court can stay an order dissolving a preliminary injunction pending the determination by the United States as to whether it will appeal the Court’s decision to dissolve the previously entered preliminary injunction. The United States is requesting that the Court stay its order entered on January 17, 2019 (ECF No. 60) dissolving the preliminary injunction to allow the United States to decide whether to pursue a potential appeal of this Court’s decision to dissolve the preliminary injunction previously entered by the Court in this case. 28 U.S.C. § 1292(a)(1); Fed.R.Civ. 62(c); Fed.R.App. 4, 8(a)(1).

Accordingly, the United States requests that the Court enter an order staying its order entered on January 17, 2019 (ECF No. 60) to allow the United States to decide whether to file an appeal of that order dissolving the preliminary injunction previously entered by the Court and to also allow the United States to test the crop which has been the subject of this case to verify that whether it is, in fact, “hemp” as defined by 7 U.S.C. § 5940(b)(2) and the Agricultural Improvement Act of 2018, Public Law No: 115-334, § 10113 (Section 297A(1)) or “marijuana” as defined by 21 U.S.C. § 802(16) before the Mallory defendants are allowed to transport the crop out of West Virginia.

Respectfully submitted,

**MICHAEL B. STUART**  
**United States Attorney**

**s/Fred B. Westfall, Jr.**  
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**CERTIFICATE OF SERVICE**

I, Fred B. Westfall, Jr., Assistant United States Attorney for the Southern District of West Virginia, hereby certify that on January 17, 2019, I electronically filed the foregoing **MOTION OF THE UNITED STATES OF AMERICA TO STAY ORDER ENTERED ON JANUARY 17, 2019, (ECF NO. 60)** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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